

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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LUIS A. HIDALGO,

Petitioner,

v.

ROBERT LEGRAND, *et al.*,

Respondents.

Case No. 3:16-cv-00618-MMD-WGC

ORDER

This is a *habeas corpus* action under 28 U.S.C. § 2254. A third amended petition was due on August 7, 2020. On July 31, 2020, Petitioner Luis Hidalgo filed a motion for stay and abeyance (ECF No. 63 (“Stay Motion”)). Respondents oppose the Stay Motion. (ECF No. 64.) Petitioner filed a reply. (ECF No. 65 (“Reply”).) In the Reply, Petitioner proposes an alternative request for an extension of time to file a third amended petition. The Court grants Petitioner this alternative request.

Timothy Hadland was murdered on May 19, 2005. The murder resulted in two state criminal cases with six defendants. Four of the six defendants—including Petitioner—have filed *habeas corpus* petitions under 28 U.S.C. § 2254. Petitioner was appointed counsel (“federal counsel”) in this case. (ECF No. 58.)

Petitioner states that he filed in the state district court a motion to modify his sentence and a motion for appointment of counsel. (ECF Nos. 63 at 3, 63-1.) Petitioner was appointed counsel (“state counsel”) in his state action. (ECF No. 63 at 4.) Petitioner’s federal and state counsel arranged for Petitioner’s federal counsel to prepare “all actual and/or potential” unexhausted claims, and then Petitioner’s state counsel would include those claims in a pending supplement in the state action. (*Id.*) The supplement had to be filed by October 30, 2020. (*Id.* at 4-5.) Petitioner moved to stay this action while Petitioner exhausts claims in state court. (*Id.*)

1           Petitioner filed in state court his motion to modify his sentence on July 31, 2020.  
2   (*Id.* at 3.) The Court has checked the online docket of the state-court case.<sup>1</sup> The most  
3   recent docket entry, on October 27, 2020, is a stipulation and order for a briefing schedule.  
4   It does not appear that Petitioner's state counsel has yet filed the supplement.

5           What Petitioner initially proposes in the Stay Motion is a combination of two  
6   situations the Court encounters in *habeas corpus* cases. First, Petitioner might file an  
7   amended petition and simultaneously seek leave to file a further amended petition with a  
8   waiver of LR 15-1's requirement to attach a proposed amended petition. Second,  
9   Petitioner might ask the Court to stay the action because post-conviction proceedings  
10   occurring in state court would exhaust the grounds in this case. The Court has granted  
11   both types of requests in different cases, or at different times in the same case.

12           By combining these two types of requests, Petitioner has created a motion to stay  
13   the case that is premature. Petitioner is asking the Court to stay this action based upon a  
14   not-yet-filed petition in state court that might exhaust claims in a not-yet-filed third  
15   amended petition with this Court. The Court does not have the documents to determine  
16   whether a stay is appropriate, and it appears that those documents do not yet exist.

17           However, Petitioner's Reply proposes an alternative whereby Petitioner is given  
18   an extension to December 4, 2020 to file a third amended petition with the Court. The  
19   extension would allow Petitioner to file the state-court supplement and then file the third  
20   amended petition with the new claims with this Court. Although the state-court  
21   supplement does not appear to have been filed by its initial due date, this is the better  
22   route in which to proceed. The third amended petition would make Petitioner's claims  
23   certain. That certainty is lacking with the initial request to stay the case.

24           It is therefore ordered that Petitioner's motion for stay and abeyance (ECF No. 63)  
25   is denied in part with respect to staying the case and granted in part with respect to an  
26   extension of time to file the third amended petition. Petitioner will have until December 4,

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28           <sup>1</sup>Petitioner's state court action, *State v. Hidalgo*, Case No. 05C212667-2, can be  
located online at <https://www.clarkcountycourts.us>. Docket report generated on  
November 3, 2020.

1 2020 to file Petitioner's third amended petition. The scheduling order of September 6,  
2 2019 (ECF No. 58) otherwise remains in effect.

3 DATED THIS 9<sup>th</sup> Day of November 2020.

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7 MIRANDA M. DU  
8 CHIEF UNITED STATES DISTRICT JUDGE  
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